IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 222 OF 1995

1. Smt. Dularidevi Mulkraj Dwivedi,

2. Shri. Arun Mulkraj Dwivedi,
Both R/o. G-17,
Satguru Apartments,
Near Hotel Golden Palace,
Vardaman Complex,
Old Agra Road,
Thane ...Appellants.

Versus

The State of Maharashtra ...Respondent

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Shri. A.Y. Sakhare, Sr. Adv. with Mrs. Varsha Palav with Mr. J.K. Patil for appellants.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 15TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellants i.e. original accused Nos. 1 and 2 have challenged the judgment and order dated 26.4.1995 passed by the learned Additional Sessions Judge Greater Bombay in Sessions Case No. 792 of 1987. By the said

judgment and order, the learned Sessions Judge convicted both the appellants under Section 498-A r.w. 34 of I.P.C. and sentenced them to suffer R.I. for two years and to pay fine of Rs.1000/- each i/d R.I. for three months.

2. The prosecution case briefly stated is as under:-

. Geeta (deceased) was the daughter of P.W.2 Lajpatrai Dora and P.W.3 Rajkumari Dora who were residents of Bhusawal. Geeta was married to the appellant No.2 Arun Dwivedi on 24.5.1983. Appellant No.1 Dularidevi Dwivedi was the mother of appellant No.2 Arun Dwivedi. As per the prosecution case, Geeta died in suspicious circumstances on 6.3.1984 in the house of appellants.

. According to the prosecution, Geeta's father had given valuables to the accused to the tune of Rs.30,000/- and had also spent Rs.25,000/- for marriage. However, despite the fact that huge money was spent in the marriage, the accused were dissatisfied with this amount and they started ill-treating and harassing Geeta. Whenever Geeta visited her parents at Bhusawal she narrated her sufferings to them. The sister of Geeta P.W.4 Asha

resided in Bombay with her husband. Whenever Geeta met Asha she narrated her suffering to Asha. According to Geeta, her husband i.e. appellant No.2 was addicted to liquor and never paid any attention to her and he did not give her money to spend. In addition to this, when Geeta conceived, accused started harassing and torturing her insisting that she must beget a son under any circumstances. Geeta thereafter asked P.W.1 Harishchandra Merath to provide some Ayurvedic medicine to her which would help her in getting a son and not a daughter. It is further the prosecution case that Geeta was required to undergo Sonography and Sonography report revealed that she was carrying a female child, due to which the ill-treatment to Geeta increased and as a result of which she committed suicide on 6.3.1984 by setting herself on fire. She sustained 100% burn injuries.

. Geeta's parents learnt about the suicide of Geeta on 6.3.1984. On receiving the message, they came to Bombay. Initially, Geeta's parents gave a statement that they have no complaint against anyone regarding the death of Geeta and that Geeta was treated well by the accused persons. Geeta's father also told to D.N. Nagar police that Geeta had never sent any letter to him or to anyone making any complaint. In view of this statement,

the matter was closed and dead body of Geeta was handed over to her husband i.e. the appellant No.2 for last rites.

. However, it is the case of P.W.2 Lajpatrai and his wife P.W.3 Rajkumari that they gave a statement exonerating the accused persons because they were in a state of shock. After going to Bhusawal and after getting Geeta's letter dated 3.3.84 they found that Geeta's death was suspicious. Hence, they sent written complaint to the Commissioner of Police, Bombay in July, 1984. According to the father of Geeta, it was a case of murder and investigating agency had tried to suppress the material facts. The complaint of P.W.2 Lajpatrai was received by D.C.B. C.I.D. on 13.8.1984. Thereafter, further enquiry was made and the further statement of P.W.2 Lajpatrai Dora came to be recorded on 27.9.84 i.e. after six months of the death of Geeta. After completion of investigation, charge sheet came to be filed.

3. In due course the case came to be committed to the Court of Sessions. Charge came to be framed against both the appellants under Section 498-A r.w. 34 of I.P.C., under Section 306 r.w. 114 of I.P.C. and under Section 4 of the Dowry Prohibition Act. Both the accused pleaded not

guilty to the said charges and claimed to the tried. The defence of the accused was that of total denial regarding the ill-treatment and demand of dowry and it was suggested that Geeta could not adjust to the problems which every newly married girl has to face. As she could not adjust herself with the family of the accused, she committed suicide. The prosecution examined in all six witnesses to prove the charges against the accused. Witnesses included P.W.1 Harischandra Merath, P.W.2 (complainant) Lajpatrai Dora who was the father of Geeta, P.W.3 Rajkumari Dora who was the mother of Geeta, P.W.4 Asha who was the sister of Geeta and other two witnesses who are the police witnesses.

4. The learned Trial judge rejected the evidence of P.W.2 Lajpatrai Dora i.e. the father of Geeta and P.W.3 Rajkumari Dora i.e. the mother of Geeta but accepted to a certain extent the evidence of P.W.4 Asha who is the sister of Geeta. He has also relied on the evidence of P.W.1 Harishchandra Merath and convicted and sentenced both the appellants as stated in para 1 above. Hence, this appeal.

5. I have heard Shri. A.Y. Sakhare, the learned senior counsel for the appellants and Shri. A.S. Shitole, the learned A.P.P. for the

respondent-State. I have also perused the entire material on record. After utmost circumspection, I have reached to the conclusion that this appeal deserves to be allowed.

6. In the present case the prosecution has examined four witnesses on the point of ill-treatment. They are P.W.1 Harishchandra Merath, P.W.2 Lajpatrai Dora, P.W.3 Rajkumari Dora and P.W.4 Asha Chavla. All these witnesses have deposed about ill-treatment to Geeta. Geeta died on 6.3.1984 due to burn injuries. However, it is pertinent to note that on 6.3.1984 P.W.2 Lajpatrai Dora and P.W.3 Rajkumari Dora as well as the brother of Geeta gave a statement that they have no complaint against any one regarding the death of Geeta and Geeta was treated well by the accused. Geeta's father also told to D.N. Nagar police that Geeta had never sent any letter to him or to anyone, making complaint. On this statement the matter was closed and body of Geeta was handed over to her husband-appellant No.2 for last rites.

7. According to P.W.2 Lajpatrai and his wife P.W.3 Rajkumari they gave a statement exonerating the accused to the police because they were in a state of shock. However, after going to Bhusawal and after getting Geeta's letter dated 3.3.1984 i.e. a

letter which was written three days prior to her death, they found that Geeta's death was suspicious. Therefore, P.W.2 Lajpatrai sent written complaint to the commissioner of Police, Bombay in July, 1984. It is pertinent to note that Geeta died on 6.3.1984, her letter dated 3.3.1984 was received few days thereafter by P.W.2 Lajpatrai Dora. However, he has sent a written complaint to the Commissioner of Police only in July, 1984. This complaint is dated 25.7.84. Thus, it is seen that for the first time Lajpatrai and his family members have made complaint against the appellant i.e. four months and 18 days after the incident. In their earlier statement dated 7.3.1984 Lajpatrai and his wife Rajkumari as well as their son had given a clean chit to the accused persons. Lajpatrai was a responsible officer of the Central Railway and he was working as a Chief Instructor at Bhusawal. He was also a well educated man and being the father of Geeta was very much concerned with her welfare. Yet he has made his complaint for the first time four months and 18 days after the incident. The explanation given by him that in his statement dated 7.3.1984 he gave clean chit to the accused persons as he was in state of shock does not seem very plausible because thereafter when he returned to Bhusawal he had enough opportunity in the next 10/15 days to come out of

the shock and to give his complaint. However, for more than 4 months and 18 days no complaint has been given by him. Even the complaint dated 25.7.84 is absolutely vague and devoid of any substantial allegations against the accused persons. There is not even a word in the complaint that Geeta was ever harassed on account of dowry or on account of demand of any cash or valuables. Both P.W.2 Lajpatrai and P.W.3 Rajkumari have repeatedly stated in their evidence that the accused persons were harassing Geeta on account of demand of dowry and that the accused persons were displeased by the dowry or ornaments given by Geeta's parents and started expressing displeasure right from the beginning of the marriage. Both these witnesses also mentioned certain incidents when the accused made demand of clothes and cash and other articles from Geeta. However, this aspect of demand does not find any mention in the complaint (Exh.13) i.e. the first complaint made by P.W.2 Lajpatrai.

8. When Geeta died on 6.3.84, P.W.2 Lajpatrai and P.W.3 Rajkumari came to Bombay, they may be under shock and may have given a statement to the D.N. Nagar police wherein they exonerated the accused persons on account of shock, but once they returned to Bhusawal and once P.W.2 Lajpatrai joined his

duties he had sufficient time and opportunity to come out of shock and lodge his complaint against the accused persons. However, for more than four months and 18 days nothing was done by any of the relatives including P.W.2 Lajpatrai, P.W.3 Rajkumari or P.W.4 Asha. So also in the complaint (Exh.13) which is dated 25.7.1984 i.e. more than four months and 18 days after the incident, no averments relating to any demand of any kind and harassment on account of such demand has been made against the accused persons. It is difficult to assume that when Exh.13 i.e. first complaint of Lajpatrai was sent he was still under mental shock. There are various improvements in the evidence of P.W.2 Lajpatrai and P.W.3 Rajkumari. All these improvements are on vital and important aspects which have already been discussed.

9. Lajpatrai has deposed that Geeta told him about ill-treatment and harassment at the hands of accused persons. However, thereafter Lajpatrai was asked as to how he learnt about the ill-treatment to Geeta by the accused persons and in reply Lajpatrai has repeatedly stated that he learnt about the ill-treatment and harassment to Geeta from Geeta's letter meaning thereby that Geeta had not personally told him about any ill-treatment to her from the accused persons. From the evidence of

P.W.2 Lajpatrai it is to be held that Geeta never told him personally regarding any ill-treatment to her. Looking to all these facts, the learned Sessions Judge has rightly disbelieved these two witnesses.

10. It is the case of P.W.2 Lajpatrai that he came to know about the ill-treatment and harassment to Geeta from her letter. Three letters have been produced by this witness i.e. letter dated 23.7.83, 10.2.84 and 3.3.84. The said letters were received much prior to the incident and it is the specific case of Lajpatrai that he came to know about the ill-treatment and harassment after receiving the letter of Geeta after he reached at Bhusawal after the death of Geeta. This last letter is dated 3.3.84 which was written by Geeta three days prior to the her death. I have carefully perused the said letter, there is no mention of any demand, ill-treatment or harassment at the hands of any of the accused persons to Geeta. In fact in the said letter Geeta says that when she feel like doing work she does work or she just quietly goes and sleeps without being least bothered what anybody says. From this it appears that the attitude of Geeta in her matrimonial house was also not as it ought to have been. On account of such behaviour if the accused persons would have

corrected her behaviour by trying to explain to her or may be rebuked her, it cannot be termed as cruelty on their part. In none of the letters written by Geeta to her parents she stated about any demand by the accused persons or any ill-treatment and harassment on account of demand nor she stated in any of the letters that any of the accused persons physically ill-treated her or beat her. As stated earlier the conduct of Geeta in her matrimonial house was also not an ideal one. In such case if the accused persons rightly tried to correct her behaviour or rebuked her, it cannot be termed as cruelty.

11. P.W.1 Harischandra Merath is another witness who has deposed that Geeta has sent him two letters i.e. Exhs.9 and 10. In the said letters also Geeta does not speak about any demand by the accused persons or any ill-treatment or harassment on account of any demand. In the said letters Geeta also does not state about any physical ill-treatment or beating by any of the accused persons to her. Though in the letter (Exh.9) Geeta has mentioned that her husband drinks and smokes but she does not state that the accused beat her or ill-treated her while he was in an intoxicated state. Geeta states in these letters that she was not given any pocket money by her husband for house

expenses but it appears that the house expenses were in the hands of her mother-in-law and brother-in-law. However, Geeta also states in the said letters that her husband takes her out for seeing movies etc. Letter written to P.W.1 Harishcnadra were written about 4 to 5 months prior to the death of Geeta. As stated earlier, there is no demand of any kind either money or otherwise in the letters or any ill-treatment or harassment on account of said demand, nor has Geeta stated that she was physically ill-treated or beaten by any of the accused persons.

12. As far as the evidence of P.W.4 Asha and P.W.1 Harischandra is concerned, their statements were also recorded belatedly. The statement of P.W.4 Asha was recorded on 3.9.1985 and the statement of P.W.1 Harischandra was recorded on 9.9.1985 i.e. about one and half years after the incident. If at all, really there was harassment and ill-treatment to Geeta, her sister Asha and her family members would have complained to the police much prior i.e. they would have given their statement or complaint to the police immediately after the incident. However, in this case the father of Geeta though an educated man holding a responsible post, for the first time makes the complaint after four months and 18 days after the incident. No explanation was

given by any of the two witnesses i.e. P.W.1 Harishchandra or P.W.4 Asha for the delay in recording their statements. The evidence of the complaint does not appear to be not plausible in the facts and circumstances of the present case. This delay raises doubt in the mind as to the veracity of the evidence of not only P.W.2 Lajpatrai and P.W.3 Rajkumari but also in respect of evidence of P.W.1 Harischandra and P.W.4 Asha. In such situation, I do not find it safe to place reliance on the evidence of these witnesses.

13. It is further the prosecution case that the accused persons wanted Geeta to beget male child and they ill-treated and harassed Geeta on this count. Geeta was about 6/7 months pregnant when she died. Obviously, the sex of the child i.e. whether male or female could have been made out only in the later part of the pregnancy. P.W.1 Harischandra has stated that Geeta had requested him to send some Ayurvedic medicine to ensure that she begets a male child. However, it is also the evidence of P.W.1 Harischandra and P.W.4 Asha that when P.W.1 Harischandra sent Ayurvedic medicine to Geeta, the accused persons got annoyed and questioned Geeta as to how she took this step to call for such medicine and sent the medicine parcel back. If at all the accused persons really desired

that Geeta should have a male child they would have allowed Geeta to take such medicine and would have welcomed such step on her part. Thus, this fact of sending medicine back also shows that the accused persons were not really interested in seeing that Geeta had a male child only. Thus, the harassment to Geeta on the count that she should have only a male child does not appear to be probable and plausible. The learned Sessions Judge has come to the conclusion that the death of Geeta was not suicidal one. From the facts of this case it does appear that the death of Geeta was not a suicidal one.

14. Thus, in the facts of the present case, I do not find it safe to rely on the evidence of any of the four witnesses i.e. P.W.1 Harischandra, P.W.2 Lajpatrai Dora, P.W.3 Rajkumari Dora and P.W.4 Asha Chavla. This is so on account of inordinate delay of four months and 18 days on the part of P.W.2 Lajpatrai in lodging the complaint and in ordinate delay on the part of the other witnesses in coming forward to give their statements. The statement of P.W.1, P.W.3 and P.W.4 have been recorded almost one and half years after the incident. Moreover, the letters which were allegedly written by Geeta did not state about any demand on the part of accused persons or any ill-treatment or harassment

on that count. The letters did not even mention any physical ill-treatment or beating on the part of any of the accused persons to Geeta. There are no any specific instances of any ill-treatment or harassment by any of the accused persons in the said letters. Hence, I find that there is no reliable evidence from which it can be said that Geeta was subjected to cruelty by the appellants.

15. In the result, this appeal is allowed. The conviction and sentence of the appellants for the offence punishable under section 498-A r.w. 34 of I.P.C. is set aside. Both the appellants are acquitted therein. Fine amount, if any deposited by the appellants shall be refunded to the appellants. The appellants are on bail, their bail bonds shall stand cancelled.